

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

REBECCA SUMMERS,	::	CIVIL ACTION NO. C-1-02-368
Plaintiff	::	JUDGE DLOTT
vs.	::	
KEEBLER COMPANY	::	
and	::	
BAKERY, CONFECTIONERY & TOBACCO WORKERS AND GRAIN MILLERS, LOCAL 253,	::	<u>AFFIDAVIT OF DAVID L. RICHARDSON</u>
Defendants	::	

• • • • •

STATE OF OHIO )  
 : SS.  
COUNTY OF HAMILTON)

My name is David L. Richardson. I have worked as an hourly employee at the Keebler plant since 1970. I was President of Local 253 from December, 1999 to December, 2002. Rebecca Summers was suspended, signed a Last-Chance Agreement, and was terminated during this period.

I have known Rebecca Summers since she was first hired in 1984, and my relationship with her has always been cordial. I have never had any animosity toward her, and to the best of my knowledge no other union official has had any animosity toward her.

On or about April 1, 2000, the Company adopted a "Substance Abuse Policy" which to the best of my knowledge was sent to all employees. It provided that there could be discipline, including immediate termination, for a number of things, including "a test result indicating alcohol concentration of .02%". This Policy has been in effect at all times since April 1, 2000.

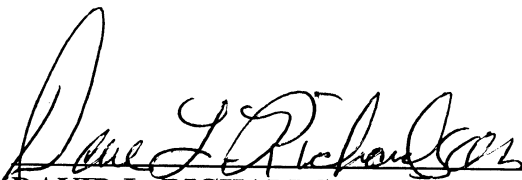
On or about August 29, 2000 I was called to the Personnel Department about Rebecca Summers. When I got there she was slurring and unsteady and I took her to the Emergency Room. She was tested for alcohol and the test showed a high concentration of alcohol. She was suspended pending completion of an alcohol treatment program.

She finally completed an approved alcohol treatment program in April of 2001. The Company agreed to reinstate her only if she signed a last-chance agreement providing that she would be subject to random testing for 18 months and that she would be terminated if she tested positive for either alcohol or drugs. She signed this agreement in my presence on or about April 26, 2001. It was and is my opinion that she would not have gotten her job back if she had not signed the Agreement.


On or about November 27, 2001, Rebecca Summers was given a random test and tested positive for alcohol. I filed a grievance for her. As I processed this grievance I checked with both an International Union Representative and our union lawyer, and both told me that there was virtually no chance of winning the case in arbitration. On or about March 10, 2002. I reported this to our Executive Board, which decides whether to proceed to arbitration on grievances or not. No one on the Board expressed an opinion that we might be able to win the arbitration, and the Board voted not to go to arbitration. I reported this to Rebecca Summers by letter dated March 11, 2002.

The Union's reason for not going to arbitration was that the grievance was not meritorious and we would not win.

I swear the foregoing statement is true to the best of my knowledge and belief.

  
\_\_\_\_\_  
DAVID L. RICHARDSON

Sworn to before me and subscribed in my presence this 30<sup>th</sup> day of October, 2003.

  
\_\_\_\_\_  
NOTARY PUBLIC



**BARBARA J. KRUPPEN**  
**Notary Public - State of Ohio**  
**My Commission Expires: 11/6/2005**

1:34

1 A. Well, I've went in where I've been  
2 drinking late, yes. I have to say that.

3 Q. You've gone into work --

12:41:43

4 A. I mean, I guess that -- I mean, I wouldn't  
5 drink it at work, but I had been drinking. Usually  
6 when I did drink I would try to make sure it was at  
7 least 8 hours before I went in. But then I was on  
8 the medication and stuff, too.

12:42:00

9 Q. You said usually you would try to make  
10 sure it was 8 hours?

11 A. Oh, at least 8 hours.

12 Q. You would always make sure it was 8 hours?  
13 You never drank up until the time you started your  
14 shift?

12:42:09

15 A. One time I finished one little drink.

16 Q. When was that?

17 A. I am not really sure of that date either.

18 Q. What time did your shift normally start?

12:42:34

19 A. Normally I start at about 3 AM. That's  
20 when my clocking in time is. Actually bake shop, we  
21 usually try to get there fifteen minutes earlier.  
22 But then we don't actually have to clock in until 3  
23 o'clock.

24 Q. So you would stop drinking by what, 7 PM

2:48

1 then?

2 A. Normally 7, 7:30.

3 Q. Did you drink every night?

4 A. No.

12:43:02

5 Q. Did you ever request assistance with an  
6 alcohol or drug problem from anyone at Keebler?

7 A. Well, just when they suspended me and told  
8 me I had to take classes to keep my job.

9 Q. So only after you were --

12:43:15

10 A. Yeah.

11 Q. -- suspended?

12 A. Yeah, after I was.

13 Q. What kind of assistance did you ask for  
14 from Keebler? Or was it basically them telling you?

12:43:25

15 A. That was basically them telling me in  
16 order to keep my job I had to go through alcohol,  
17 drug classes.

18 Q. On August 29th, 2000, you were drunk at  
19 work, weren't you?

12:43:43

20 A. Well, I pos-- I came out positive.

21 MR. SEIBEL: Can we take a break real  
22 quick?

23 MS. PRYOR: Yeah. I'd love to see  
24 whatever she's got in here.

4:45 1 mother's. I know it was the day before that we went  
2 to a party and I drank pretty much that day.

3 Q. The day before you went to your mother's?

01:04:54 4 A. Yeah. But the day I went to my mother's,  
5 I did not have nothing to drink after 7 o'clock.

6 Q. And did you go to your mother's before or  
7 after you went to the hospital?

8 A. This date?

9 Q. Mm-hmm.

01:05:02 10 A. I know I didn't go after I was at my  
11 mother's house.

12 Q. You didn't go where after?

13 A. I didn't go to the hospital.

01:05:16 14 Q. So you went to your mother's house after  
15 you went to the hospital, then?

16 A. Yes.

17 Q. Okay. So the night before you went to the  
18 hospital, you had been at a party?

19 A. Yes.

01:05:22 20 Q. And had a lot to drink?

21 A. (Witness nodded head.) Yes.

22 Q. That would have been why there was a lot  
23 of alcohol in your system when you went to the  
24 hospital?

5:29

1 A. Probably, yes.

2 Q. Okay. So your testimony earlier that it  
3 was just Nyquil and some Hall's wasn't --

01:05:39

4 A. Well, I mean, you're getting my dates  
5 confused. I mean it's like -- I don't know which --

6 Q. I'm talking about why you went to the  
7 hospital, why you passed out at work, and why you  
8 had to go to the emergency room, and why your  
9 alcohol level was over 400.

01:05:50

10 A. That day I just went to my mother's when  
11 they took me from the hospital.

12 Q. From the hospital.

13 A. From the hospital. That's when I went to  
14 my mother's.

01:05:56

15 Q. Before you got to work, though --

16 A. Yeah.

17 Q. -- you had been at a party. What time did  
18 you finish the party?

01:06:09

19 A. I'm trying to think. This is too far back  
20 to remember right off my head.

21 Q. Did you tell on this meeting on October  
22 2nd, did you tell them that you had been drinking up  
23 until 2 AM, had your last bloody Mary around 2 AM?

24 A. I finished it up on my way to work. But I

**BREATH ALCOHOL TESTING FORM (NON-DOT)**

(THE INSTRUCTIONS FOR COMPLETING THIS FORM ARE ON THE BACK OF COPY 3)

► **STEP 1: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN**

A. Employee Name: Rebecca Summers  
(PRINT: First/Middle Initial/Last)

B. SSN or Employee ID No.: 272-661-1235

C. Employer Name: Keckler Bakery  
Address: 1 Trade St.  
City, State, Zip: Cinti, Ohio  
Telephone No.: \_\_\_\_\_

D. Reason for Test: ☐ Pre-employment ☐ Random ☒ Reasonable Suspicion/Cause  
☐ Post-Accident ☐ Return to Duty ☐ Follow Up

ALCOMONITOR CC 1009  
08/29/00  
TEST NO. 172

SSN: 272661235.....

► **STEP 2: TO BE COMPLETED BY EMPLOYEE**

I certify that I am about to submit to breath alcohol testing required by my employer and that the identifying information provided on this form is true and correct.

Rebecca Summers Date: 8 / 29 / 00  
Signature of Employee Month Day Year

SCREENING TEST  
8/29/00 TIME  
1400 AUTO 12:28ALCOMONITOR CC 1009  
08/29/00  
TEST NO. 173

SSN: 272661235.....

► **STEP 3: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN**

I certify that I have conducted breath alcohol testing on the above-named individual in accordance with the procedures established in the U. S. Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing devices identified, and that the results are as recorded.

Screening Test: Complete only if the testing device is not designed to print the following:

Test No.	Testing Device Name and Serial Number
Time	AM PM Result

Confirmation Test: Confirmation test results MUST be affixed to the back of each copy of this form.

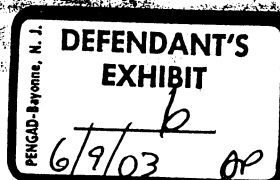
Remarks: \_\_\_\_\_

T. Gallo Date: 8 / 29 / 00  
PRINT: Breath Alcohol Technician's Name (First/Middle Initial/Last) Month Day Year  
T. Gallo Norwood  
Signature of Breath Alcohol Technician Bethesda Care Location

CONFIRMING TEST  
8/29/00 TIME  
1400 BLANK  
1400 AUTO 12:40► **STEP 4: TO BE COMPLETED BY EMPLOYEE**

I certify that I have submitted to the breath alcohol test, the results of which are accurately recorded on this form. I further understand that these results will be provided to my employer.

Rebecca Summers Date: 8 / 29 / 00  
Signature of Employee Month Day Year





Bethesda

Bethesda Care—Blue Ash ☐  
791-4040Bethesda Care—Norwood ☒  
731-3399Bethesda Care—Queensgate ☐  
241-4135Bethesda Care—Sharonville ☐  
563-1505Bethesda Care—Woodlawn ☐  
771-1100REASONABLE CAUSE/FITNESS FOR DUTY EXAMINATION

## Final Report

Date: 8 / 29 / 00Employee: Rebecca Summers

Dear Bethesda Care Client:

Your employee underwent a Reasonable Cause/Fitness for Duty examination at Bethesda Care on 8 / 29 / 00.

The results of this examination at that time indicated that the individual:

☒ Was Clinically Impaired.☐ Was Not Clinically Impaired, but Should Not operate a motor vehicle or power machinery.☐ Was Not Clinically Impaired.

The individual has been referred to you for consideration under your company policy for Reasonable Cause/Fitness for Duty.

The results of the drug and the laboratory tests are as follows:

breath alcohol confirmation = >400g/210L  
(done at 12:33 pm)urine drug screen - negativeComments: Pt. was sent to ER for blood ETOH  
levels, further testing - at our request.Blood alcohol level done in ER = 386 mg/dl  
(collected at 12:40 pm)

Please contact Bethesda Care if you have any questions.

Mpm  
Physician SignatureJ. J. J. J. J.  
8/30/00

5:29

1 Q. For Delta?

2 A. It's a branch of Delta.

3 Q. Comair?

4 A. It used to be Comair. Now they changed it

01:15:40

5 to -- I think it's called Delta Air Elite or

6 something now. He flies the private planes.

7 Q. Okay.

8 (Exhibit No. 9 marked for identification.)

9 Q. You've been handed what's been marked as

01:16:36

10 Exhibit 9. Do you recognize it?

11 A. Yes. That's a last chance agreement.

12 Q. Okay. Is that your signature at the

13 bottom?

14 A. Yes.

01:16:45

15 Q. And that's, I assume, the date you signed  
16 it, April 26, 2001?

17 A. Yeah. Yes.

18 Q. Was that shortly after you completed your  
19 rehabilitation program?

01:16:53

20 A. Yes.

21 Q. And did you read this agreement before you  
22 signed it?23 A. Actually, I believe Sharon read this to  
24 me.

7:01

1 Q. Okay. Did you understand it?

2 A. For the best -- most part. Yes.

3 Q. Did Sharon Maul ask you if you had any  
4 questions?

01:17:11

5 A. Yes, she did.

6 Q. Did you ask any?

7 A. I don't believe so.

01:17:26

8 Q. Did Sharon Maul explain to you that you  
9 were waiving your right to arbitrate any penalty if  
10 you violated this agreement?

11 A. I don't remember that part of the  
12 conversation.

13 Q. Okay. You were not forced to sign this,  
14 were you?

01:17:36

15 A. I was told by the union that -- nobody  
16 forced me, forced me. But I was just told if I  
17 didn't sign this I would not have my job.

18 Q. And if you would have lost your job, you  
19 could have grieved that termination at that time;  
20 correct?

01:17:59

21 A. Could you reword, re --

22 Q. Sure. Sure. If you'd been fired, you  
23 could have filed a grievance with the union;  
24 correct?

3:08

1 A. I'm not sure about that either. I don't  
2 know.

3 Q. You don't know?

01:18:14

4 A. I don't know. No. I don't know details  
5 on that.

6 Q. Okay. So in order to keep your job, you  
7 agreed to the terms of this last chance agreement?

8 A. I was told that was the only way I could  
9 keep my job.

01:18:23

10 Q. And you wanted to keep your job?

11 A. Yes, I wanted to keep my job.

12 Q. And you did get to keep your job then;  
13 correct?

14 A. Yes.

01:18:30

15 Q. And as part of this agreement, you agreed  
16 that you would be subject to random alcohol tests?

17 A. Yes. Which is about every other week at  
18 least.

01:18:40

19 Q. Okay. You were tested almost every other  
20 week?

21 A. It was pretty often. Seemed like it was  
22 every day almost.

23 Q. You also agreed that you'd be terminated  
24 if you tested positive for alcohol; correct?

8:50

1 A. I believe so.

2 Q. Okay. Did the company ever give you any  
3 further explanation about this policy or about this  
4 agreement, Exhibit 9?

01:19:00

5 A. I don't believe so.

6 Q. Did you have any other discussions with  
7 the company about this agreement?

01:19:11

8 A. Only talked to Dave about it. And he  
9 basically he told me the same, you know, that -- I  
10 asked him if he would sign it and he said probably.  
11 But that's about the only conversation we had about  
12 that.

13 Q. Okay. So you had a conversation with Dave  
14 Richardson --

01:19:21

15 A. I just went over it with -- you know, he  
16 was there actually. And I told him I really didn't  
17 really want to sign it, but that was the only way I  
18 could keep my job.

01:19:35

19 Q. Okay. Dave Richardson was there when you  
20 had -- when Sharon Maul read this to you?

21 A. I believe he was there when -- one of the  
22 union people was there when she read this to me.

23 Q. Do you remember anything else that  
24 happened at that meeting when Sharon Maul read this

**MEMORANDUM OF AGREEMENT  
BETWEEN  
KEEBLER COMPANY/CINCINNATI BAKERY & BAKERY,  
CONFECTIONERY & TOBACCO WORKERS' and GRAIN MILLERS,  
LOCAL 253 and REBECCA SUMMERS**

The following Agreement was reached on April 26, 2001 between representatives of the Keebler Company (Company), employee Rebecca Summers and representatives of the Bakery, Confectionery and Tobacco Workers' Grain Millers International Union, AFL-CIO, Local 253 (BCTGM).

Ms. Summers will be returned to work immediately upon signing, with full seniority rights and privileges provided she submits a negative drug screen. Her drug screen must occur no later than April 19, 2001.

Furthermore, Ms. Summers must agree to submit to drug/alcohol testing at the Company's request and will be subject to such random testing for eighteen (18) months from the date of this Agreement. This provision will be extended by the amount of time not worked. Should Ms. Summers test positive for either alcohol or drugs, she will be terminated.

Should Ms. Summers violate any terms of this waiver, Ms. Summers will be terminated. It is understood and agreed that should Ms. Summers be terminated for violation of the Substance Abuse Policy, the parties may grieve the appropriateness of the charge only and cannot contest the degree of penalty.

In exchange for the above consideration, Rebecca Summers and the BCTGM release and hold harmless the Company for all known or unknown claims or violations of any federal, state, or local statutes arising from the execution of this Agreement.

The BCTGM and the Company further agree this Agreement will not establish precedent for any disciplinary action or grievance settlement, and may not be admitted into evidence in any arbitration, now or in the future that may arise as a result of termination or discipline of any employee of the Keebler Company.

I, Rebecca Summers, have entered into this Agreement freely and with full knowledge of its contents. I have had the opportunity to discuss these issues and all of my questions and concerns have been answered to my satisfaction. I agree that my interests have been fully and properly represented by the BCTGM. My signature below indicates my consent to the terms of this Agreement.

Rebecca Summers      4-26-2001  
Rebecca Summers      Date

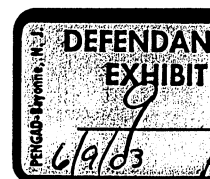
FOR THE COMPANY

Sharon Maul

FOR THE UNION

David Richards

000029



3:01

1 alcohol pursuant to the last chance agreement;  
2 correct?

3 A. I believe so.

01:33:09

4 Q. And you tested positive for alcohol;  
5 correct?

01:33:22

6 A. I -- according to what they told me, if  
7 that's the date that I'm thinking, they said that  
8 the first one was wrong and she thought the machine  
9 might have something wrong with it. And within  
10 fifteen minutes it dropped quite a few little points  
11 or whatever. So they gave me two the day that I  
12 talked about.

13 (Exhibit No. 10 marked for identification.)

01:33:50

14 Q. You've been handed what's been marked as  
15 Exhibit 10. You said they gave you two. They  
16 always gave you two tests, didn't they?

17 A. No.

18 Q. They didn't always?

01:33:58

19 A. No. They always just gave me the one  
20 where I put a straw and I blew in it.

21 Q. Really?

22 A. Mm-hmm.

23 Q. This was the only time they gave you two  
24 tests?



# Alcohol Testing Form (Non-DOI)

(The instructions for completing this form are on the back of Copy 3)

## STEP 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name Rebecca Summers  
(Print) (First, M.I., Last)

B: SSN or Employee ID No. 272-66-1235

C: Employer Name Keckler Bakery  
Street 1 Trade Street

City, ST ZIP Cin. OH 45227

DER Name and Telephone No. Dominick Chorley 513-271-1276  
DER Name DER (Area Code & Phone Number)

D: Reason for Test: ☒ Random ☐ Reasonable Susp. ☐ Post-Accident ☐ Return to Duty ☐ Follow-up ☐ Pre-employment

ALCOHOL MONITOR DC 1009  
11/27/01  
TEST NO. 995  
SER: 272661235.....

SCREENING TEST  
8/210L TIME  
030 AUTO 08:55

## STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing and that the identifying information provided on the form is true and correct.

Rebecca Summers 11-27-01  
Signature of Employee Date Month / Day / Year

## STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: ☒ BAT ☐ STT DEVICE: ☐ SALIVA ☒ BREATH\* 15-Minute Wait: ☒ Yes ☐ No

SCREENING TEST: (For BREATH DEVICE\* write in the space below only if the testing device is not designed to print.)

Test #	Testing Device Name	Device Serial # QR Lot # & Exp. Date	Activation Time	Reading Time	Result

CONFIRMATION TEST: Results MUST be affixed to each copy of this form or printed directly onto the form.

REMARKS:

Alcohol Technician's Company Bethesda Care Norwood  
3000 Montgomery Rd  
Cincinnati, OH 45212  
(PRINT) Alcohol Technician's Name (First, M.I., Last) Company City, State, Zip  
513-731-3399  
Phone Number (Area Code & Number)

B. Vogel 11-27-01  
Signature of Alcohol Technician Date Month / Day / Year

## STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS POSITIVE

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are positive.

Rebecca Summers 11/27/01  
Signature of Employee Date Month / Day / Year

COPY 1 - ORIGINAL - FORWARD TO THE EMPLOYER

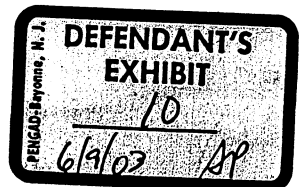
471-FS-C3 (Rev. 6/01) 6363

ALCOHOL MONITOR DC 1009  
11/27/01  
TEST NO. 1000  
SER: 272661235.....

CONFIRMING TEST  
8/210L TIME  
030 AUTO 09:11

ALCOHOL MONITOR DC 1009  
11/27/01  
TEST NO. 1001

CALIBRATION CHK  
8/210L TIME  
036 TANK  
034 RESULT 09:14





7:19

1 shift I basically worked most of the time.

2 Q. And can you account for why there was  
3 alcohol in your system?

01:37:28

4 A. No. Other than my -- like I said, this  
5 day I even had some cough syrup on the way to this  
6 hospital that day.

7 Q. Why did you take cough syrup on the way to  
8 be tested for alcohol?

9 A. I didn't know I was going at the time.

01:37:39

10 Q. Where did you think you were going?

11 A. I mean, I didn't know that I was going to  
12 get tested that day. And I mean, I used the cough  
13 syrup, the Hall's I guess you should call it, while,  
14 you know, at work. I used those two or three times  
15 a day. And I did use mouthwash, too.

01:37:51

16 Q. Let's start, on this particular day,  
17 November 27th, 2001 -- which is the day you were  
18 tested and then subsequently terminated after that;  
19 correct? You started work at 3 AM?

01:38:05

20 A. Yes.

21 Q. Did you take any cough syrup before that?

22 A. I took Hall's, and I also used like a  
23 spray. Like it's instead of having mouthwash you  
24 got to carry around, it's in a little bottle. Which

8:20

1 I could show you one of those if you want to see it.

2 Q. Yeah. If you've got whatever you used  
3 that day.

01:38:28

4 A. I use this kind of stuff. (Witness  
5 handing bottle.)

6 Q. This is called Cinnamint Ora, O R A, Labs,  
7 Ice Drops Breath Spray. Was this the same thing  
8 that you used that day?

01:38:43

9 A. Yes. Not the same bottle, but yes, that's  
10 what I always use.

11 Q. Same brand?

12 A. Yes. I always carry one in my pocket.

13 Q. And when did you use it?

14 A. I used that on and off all day long.

01:38:53

15 Q. Do you remember when you used it on the  
16 day in question, November 27th?

17 A. Actually, I used some of that on my way to  
18 take my urine test.

01:39:05

19 Q. Why would you use something like that on  
20 your way to take a breath test?

21 A. I really didn't realize at the time that  
22 it had something in it, you know.

23 Q. You didn't realize that mouth spray has  
24 alcohol in it?

7:14

1 A. No.

2 Q. Did you take anything else on that day,  
3 November 27th?

4 A. Just my Hall's and my breath spray.  
5 That's it.

01:39:20

6 Q. You didn't take any Nyquil that day?

7 A. Not that day. I only take that mostly at  
8 night.

9 Q. Did you take any the night before?

01:39:26

10 A. Yes.

11 Q. How much did you take the night before?

12 A. My two teaspoonsful. And I probably took  
13 that around 9:30, 10 o'clock.

14 Q. And your attorney has produced today a  
15 bottle, Vick's Nyquil?

01:39:40

16 A. Yeah.

17 Q. Green. Is this the actual Nyquil you took  
18 that day?

19 A. Yes.

01:39:45

20 Q. Original Flavor, Multi-Symptom Cold/Flu  
21 Relief. How do you know you took that that day?

22 A. Because that's the only kind I've got at  
23 home. And that's the only bottle I've got at home.

24 Q. This has an expiration date of November

0:00

1 '99.

2 A. Yeah.

3 Q. So it was outdated when you took it?

4 A. Yeah.

01:40:06

5 Q. Does this stuff last you all year? How  
6 often do you take Nyquil at night?

7 A. I usually only take it once, sometimes  
8 twice. But you know, you have to wait so many hours  
9 to do that.

01:40:17

10 Q. Once, sometimes twice a night?

11 A. Yeah. I mean, like if I would start  
12 congesting, getting coughed up, I might take it at  
13 like maybe 6 in the evening and then take a little  
14 bit before I go to bed.

01:40:28

15 Q. How often do you take it? I mean, how  
16 many -- do you take it every night, do you take it  
17 every other night?

18 A. Not every night, no.

19 Q. How often?

01:40:34

20 A. Probably, I'd say, maybe twice a week  
21 probably.

22 Q. And this bottle lasted you from sometime  
23 before '99 till 2001, taking it sometimes twice a  
24 week?

0:43

1 A. Yeah. I only take it when I would get  
2 congested. I don't take it, you know -- that's the  
3 most I would take it, would be two times a week.  
4 But I didn't take it every night.

01:40:51

5 Q. And it lasted you more than two years?

6 A. Yeah.

7 Q. Okay.

01:40:59

8 A. Yeah. Because like I said, too, if I'm  
9 not really having a hard time, you know, like  
10 breathing and stuff, I usually just took a cough  
11 drop and nose spray, nasal spray.

12 Q. Did you use this after, have you used that  
13 same bottle after?

01:41:11

14 A. No. No. Actually, I brought that and  
15 gave it to Mark.

16 Q. When did you give it to Mark?

17 A. Well, I'd say maybe a month or so ago.  
18 I'm not positively sure.

01:41:23

19 Q. Between November 2001 and a month ago, did  
20 you use that bottle?

21 A. No.

22 Q. Why did you stop using it after November  
23 2001?

24 A. I didn't need it, I guess.

1:35

1 Q. Do you have a new bottle of Nyquil at  
2 home?

3 A. Yeah.

4 Q. When did you buy it?

01:41:41

5 A. When?

6 Q. Mm-hmm.

7 A. I probably bought that, I probably bought  
8 that like three or four months ago. And it's the  
9 red flavor instead of the green.

01:41:52

10 Q. Okay. So on November 27th you took one to  
11 two tablespoons?

12 A. Yes.

13 Q. Teaspoons or tablespoons?

14 A. Small ones, like you eat food with.

01:42:08

15 Q. Tablespoons more than likely, then. And  
16 that was before you ever got to work; correct?

17 A. Yes.

18 Q. Was it before you went to bed at night?

19 A. Yes.

01:42:15

20 Q. So sometime before probably 10 PM.

21 A. Yeah.

22 Q. And then you sprayed your mouth with --

23 A. That stuff.

24 Q. -- these Ice Drops Breath Spray. How many

2:25

1 times did you do that, do you know?

2 A. Times? I probably do that at least every  
3 hour or so, because your mouth gets so dry going in  
4 and out of that room.

01:42:35

5 Q. Have you ever -- you said you took breath  
6 tests nearly every other week; correct?

7 A. Yeah. Every few weeks.

8 Q. Did you ever spray your mouth before you  
9 took any of the breath tests?

01:42:46

10 A. Usually I use mouthwash, but usually not  
11 too often. Not before I take one.

12 Q. But had you before?

13 A. Yes.

14 Q. Okay. Besides this November 27th?

01:42:57

15 A. Yes, I have.

16 Q. And it came out negative, correct, test  
17 result?

18 A. Yes. But I didn't take the Hall's with  
19 it, too.

01:43:03

20 Q. Okay. And you took some -- how many  
21 Hall's did you take that day?

22 A. I'd say -- just a guess, I'd say would use  
23 four or five a day. That's through my whole shift,  
24 though.

3:19

1 Q. Do you remember what time the last one  
2 that you took was?

3 A. Actually I had one on my way to the -- I  
4 had it in the -- when I was driving.

01:43:28

5 Q. Was that before or after you took the  
6 breath spray?

7 A. Actually -- before. Because I put the  
8 breath spray in right before I got there.

9 Q. And you didn't take any alcohol at work.

01:43:52

10 A. No, I did not. Not that day. No, I did  
11 not.

12 Q. Did you drink any alcohol the night  
13 before?

01:44:00

14 A. Like I said, with my dinner I probably had  
15 the two small cans of beer. That was before 7  
16 o'clock.

17 Q. When you say small cans, what size is  
18 that?

01:44:08

19 A. Is that a twelve-ounce? About the size of  
20 that Diet Coke there.

21 Q. Regular pop can size?

22 A. Yeah.

23 Q. And that would have been with dinner at  
24 what time?



140

1:08

1 couple beers about that size. Which was before --  
2 it was between 6:30 and 7.

3 Q. Okay. And then you had nothing to drink  
4 at your mother's house?

02:54:35

5 A. No. My mother and them does not drink.  
6 No.

7 Q. And after that it was just Nyquil and  
8 breath spray?

9 A. And Hall's.

02:54:44

10 Q. And Hall's. Before you had the couple of  
11 beers before going over to your mother's, had you  
12 had anything else to drink that day?

13 A. Not -- no, not that day.

14 Q. On the previous day?

02:55:04

15 A. No. But that was -- not that day, no. I  
16 had my two beers with my pizza.

17 Q. What else do you drink besides beer?

18 A. Besides beer? I'll have a glass of wine  
19 every now and then at dinner if we go out somewhere  
20 fancy, my husband's got like a dinner out with  
21 people he works with, important people.

02:55:25

22 Q. Do you drink vodka?

23 A. I have drank gin some, but normally I  
24 don't particularly like vodka.

5:47

1 Q. Do you ever have bloody Marys.

2 A. Occasionally, yes. Not too often.

02:56:21

3 Q. Okay. Before the couple of beers with  
4 pizza that day before you went to your mother's and  
5 after which you went to work --

6 A. You talking about the day I got fired?

7 Q. The day before the day you got fired. Do  
8 you remember what else you did that day?

02:56:35

9 A. Basically the day before -- you talking  
10 about the one before I went to my mother's that  
11 night?

12 Q. Mm-hmm.

13 A. Basically did laundry, mowed grass,  
14 cleaned the house a little bit.

02:56:48

15 Q. Okay.

16 A. Took my son to his tutor.

17 Q. How much does your husband make?

18 A. How much does my husband make?

19 Q. Mm-hmm.

02:57:05

20 A. About 110,000, -12,000 a year.

21 MR. ROBINSON: Can I have just a moment?

22 MR. SEIBEL: Yeah.

23 (Brief recess.)

24 BY MR. ROBINSON:

7:02

1 then the Hall's probably do, too.

2 Q. They have cough syrup inside the Hall's?  
3 These are the solid Hall's throat lozenge?

4 A. Yeah, the solid Hall's. Mm-hmm.

01:47:12

5 Q. And do you remember if the ones -- were  
6 they square, the ones you took that day?

7 A. Yeah, the ones I had was square.

8 Q. Okay. And you were tested, looks like  
9 around 9 AM that day.

01:47:27

10 A. Yeah, I believe so. Yes.

11 Q. As a result of this positive test, you  
12 were terminated on November 30th, 2001; is that  
13 correct?

14 A. Yes.

01:48:19

15 (Exhibit No. 11 marked for identification.)

16 Q. You've been handed what's been marked as  
17 Exhibit 11. Is that the letter that you received  
18 terminating your employment?

19 A. Yes, it is.

01:48:27

20 Q. Anyone ever tell you a different reason  
21 for your termination?

22 A. Nope.

23 Q. Okay. Any reason to doubt that was the  
24 reason for your termination, that you violated your

3:35

1 last chance agreement?

2 A. All I know is that's what they told me,  
3 so --

01:48:43

4 Q. Who did you talk to on the phone out in  
5 the hallway before you came back in the room?

6 A. I was calling my husband.

7 Q. You didn't talk to Paul Smith?

8 A. No. Paul is downstairs somewhere.

9 Q. Why is Paul here today?

01:48:52

10 A. He brought me down.

11 Q. Why did he bring you down?

12 A. Because I wasn't exactly sure where this  
13 place was.

14 Q. Okay. Has he been terminated as well?

01:49:02

15 A. Yeah. He's back to work now.

16 Q. Okay.

17 A. I guess he was terminated or suspended or  
18 something, but he's back to work.

01:49:14

19 Q. What have you talked to Paul about this  
20 case?

21 A. Paul pretty well knows most of what I'm  
22 doing.

23 Q. Does he know anything about your  
24 termination?

7:23

1 A. Oh, yes.

2 Q. What does he know about it?

3 A. About everything we just went over,  
4 basically.

01:49:29

5 Q. Has he ever said whether he thinks it was  
6 right or wrong?

7 A. He tends to think it was wrong.

8 Q. Why does he think it was wrong?

01:49:39

9 A. Because everybody I talked to that day  
10 said they knew by working with me that I had not  
11 been drinking that day.

12 Q. Who said that?

13 A. Different people at work. People I work  
14 right next to.

01:49:49

15 Q. You didn't have to be drinking at work to  
16 be terminated, did you? You just had to have  
17 alcohol in your system; correct?

18 A. As far as I know, yes.

01:50:01

19 Q. What people at work did you work with that  
20 day that have told you this?

21 A. Well, their names are on my list. One of  
22 them is -- it used to be Regina Hine, but I don't  
23 know what her last name is. She got married. I  
24 don't think her name is on that list there.

0:16

1 Q. What is this list of people on this --

2 A. That's the one that could be, if it goes  
3 to court, that could be subpoenaed or witnesses or  
4 whatever. Mark's got a list of those also.

01:50:27

5 Q. Okay. What list are these people on that  
6 you said were there that day? You said they were on  
7 a list. What list?

01:50:42

8 A. Oh. I just had people like basically say,  
9 well, if you need me to testify that I worked with  
10 you all day that day, I talked to you all day that  
11 day, I could be your witness if you want me to.

12 Q. Who are they?

13 A. Her name is Regina. Sharon might know her  
14 last name now. It used to be Hines.

01:50:55

15 Q. Anybody else besides her?

16 A. Well, I talked to of course Paul Smith.  
17 Pat Green.

18 Q. Did he see you that day?

19 A. Yes, he did.

01:51:09

20 Q. Okay. Pat Green?

21 A. Yes.

22 Q. Who else?

23 A. Well, my relief guy. I don't know who was  
24 relieving that day. It was either Roy Jordan, I

1:16

1 think that's his name, or it could have been --  
2 could have been Bruce Hines. I don't know who was  
3 relieving that day.

01:51:29

4 Q. Okay. Did you have any discussion with  
5 anybody at the company about your termination?

6 A. Not other than -- no, just people I work  
7 with, basically.

8 Q. Nobody, no supervisor or manager?

9 A. No.

01:51:44

10 Q. Did you file a grievance?

11 A. Yes, I did.

12 (Exhibit No. 12 marked for identification.)

01:52:10

13 Q. You've been handed what's been marked as  
14 Exhibit 12. Is this a copy of the grievance that  
15 you filed?

16 A. Yes, it is.

17 Q. Was it your decision to file the grievance  
18 or the union's?

19 A. Actually it was mine.

01:52:17

20 Q. Okay. And why did you file the grievance?

21 A. Because I thought that I was not treated  
22 fairly.

23 Q. Why didn't you think you were treated  
24 fairly?



Keebler Company

One Trade Street

Cincinnati, OH 45227

ph 513.271.3500

fx 513.271.3531

November 30, 2001

Ms. Rebecca Summers  
1166 McGuffey Lane  
Batavia, OH 45103

Dear Rebecca,

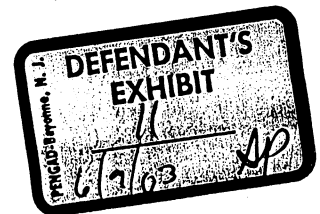
The Company has decided to terminate your employment effective today for violation of your Last Chance Agreement.

Please contact Jamie Chorley for important benefits continuation information.

Sincerely,  
KEEBLER COMPANY/CINCINNATI BAKERY

Sharon Maul  
Human Resources Manager

C: J. Morgan, Plant Director  
J. Chorley, Employee Relations Manager



000026





# Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 253, AFL-CIO, CLC

## GRIEVANCE FORM

Bear Down you are making several copies

Control 168

Member Name Rebecca Summers Job Title Dough up mixer Date DEC. 3

Employed at Keebler Company/Cincinnati Bakery, BAKE Shop / SC

Department

Shift

Committee Person David L Richardson

Name of Manager Involved H.R. Sharon Maul

Specify Contract Violation

NATURE OF COMPLAINT: Unjust discharge. No Violation  
of last chance Agreement. I want my job  
back And made whole.

Signature Becky Summers

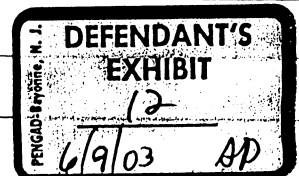
Clock No.

Hiring  
Date

3-26-84

Management Reply

Grievant violated last chance Agreement  
Denied. 12/3/01



Signature

Date  
Received

Date  
Reply

Disposition:

000027

5:38

1 A. Not that I know of.

2 Q. You don't know one way or the other?

3 A. No. I don't know one way or the other.

4 They could have, but I'm -- all I know is after I

01:55:48

5 got me a lawyer they said I wasn't allowed to talk  
6 to nobody down there. I mean, they wouldn't talk to  
7 me either.

8 Q. Did you have any discussions with the  
9 union about your termination?

01:56:12

10 A. Other than saying that I didn't think they  
11 treated me right, but not --

12 Q. The union or Keebler didn't treat you  
13 right?

14 A. Well, neither one, really. Especially the  
15 union. They -- I guess you'd say when my boat was  
16 sinking, they did not try to help me.

01:56:21

17 Q. What could they have done to help you?

18 A. What did they do?

19 Q. What could they have done to help you,  
20 that you think --

01:56:32

21 A. They could have fought a little harder for  
22 me, which they didn't.

23 Q. How could they have fought harder?

24 A. They really didn't even try to -- I don't

5:46

1 think they tried hard enough to -- I guess you'd say  
2 where they go along and go through all the stuff  
3 with you and go to arbitration and all that, they  
4 all -- basically most of them voted against me, I  
5 guess.

01:56:58

6 Q. So basically they just decided not to take  
7 you to arbitration?

8 A. Yes. Yes.

9 Q. And that's why you think they didn't treat  
10 you right?

01:57:05

11 A. Yes.

12 (Exhibit No. 13 marked for identification.)

13 Q. You've been handed what's been marked as  
14 Exhibit 13. Is this the letter where the union  
15 notified you that they would not be taking your case  
16 to arbitration?

01:57:37

17 A. Yes, it is.

18 Q. Do you have any evidence to dispute that  
19 the executive board of the union met regarding your  
20 discharge?

01:57:50

21 A. I have no ideal.

22 Q. Any evidence to dispute that the union  
23 conducted a full and complete investigation of the  
24 facts?

01:58

1 A. I have no ideal about that either. Don't  
2 know.

01:58:05

3 Q. Did you talk to anyone at the union  
4 regarding their decision to not take it to  
5 arbitration?

6 A. No.

7 Q. And do you know why the union did not take  
8 it to arbitration?

01:58:14

9 A. Probably thought that they couldn't win my  
10 case or it would cost them too much money. Because  
11 they said the union was low budgeted, something.

12 Q. You don't have any other evidence of why  
13 they didn't take it?

14 A. No.

01:58:27

15 Q. Now, you filed for unemployment  
16 compensation; correct?

17 A. Yes, I did.

18 Q. And you went to a hearing?

19 A. Yes, I did.

01:58:33

20 Q. And had the opportunity to present your  
21 case?

22 A. Yes, I did.

23 Q. And that hearing was tape-recorded;  
24 correct?

0:51

1 A. No.

2 Q. You've already been given a last chance  
3 agreement.

4 A. Yes.

02:00:55

5 Q. Did you understand what a last chance  
6 agreement meant?

7 A. No.

8 Q. Okay.

9 A. Not really.

02:01:01

10 Q. Other than these other people who were  
11 terminated for different reasons, some of whom have  
12 come back to work, any other reason why you think  
13 you were treated unfairly?

14 A. I'm thinking. Sorry.

02:01:15

15 Q. That's okay. Go ahead, think.

16 A. I guess not.

17 Q. Okay.

18 A. Other than I'm a girl.

02:01:29

19 Q. Why do you think that had anything to do  
20 with it?

21 A. Because from what I've understood, most of  
22 the people that came back has been men.

23 Q. Do you know of any women who have been  
24 terminated?

1:42

1 A. Yes, I do.

2 Q. Who?

3 A. One of them was Beverly something, Rich or  
4 whatever her name is.

02:01:52

5 Q. Do you know why she was terminated?

6 A. Well, I think it was she got into it with  
7 some supervisor or manager or something. I can't  
8 exactly -- I know she's not back to work.

9 Q. You don't know the exact circumstances?

02:02:06

10 A. No, I don't.

11 Q. How did you hear about her termination?  
12 From other people?

13 A. Yes.

14 Q. And do you know when she was terminated?

02:02:13

15 A. Not the exact date, but I know the guy  
16 she's dating, too, you know. He mentioned it to me.

17 Q. Any other women?

18 A. I haven't talked to Beverly in -- there's  
19 been more, but I don't know their names.

02:02:28

20 Q. You don't know any of the women's names  
21 who have been terminated?

22 A. No.

23 Q. Do you know any of the men who have been  
24 terminated and brought back to work, other than Paul

2:38

1 Smith?

2 A. No. I'm sure there is, but I don't know  
3 any names.

4 Q. You don't know any of them?

02:02:42

5 A. No.

6 Q. Any other reason why you think it was  
7 because you're a woman?

8 A. Not really, no.

02:02:55

9 Q. Do you know anybody else who has violated  
10 a last chance agreement and been brought back to  
11 work?

12 A. I've never known of anybody down there  
13 that signed one.

14 Q. You have no way of knowing?

02:03:03

15 A. I don't know.

16 Q. Anything else that you think the union did  
17 wrong?

18 A. No, I guess not.

02:03:37

19 Q. I think you testified earlier you don't  
20 have any kind of impairment, anything that limits  
21 you in any way?

22 A. No. Not that I'm --

23 Q. Do you think that Keebler ever thought  
24 that you had some kind of impairment that limited

7:49

1 A. No.

2 Q. -- that the union treats women differently  
3 from men?

4 A. Not to my knowledge, no.

02:47:54

5 Q. Okay. Do you have a handicap?

6 A. A handicap?

7 Q. Yeah.

8 A. Not that -- like she asked me, you know,  
9 other than a little bit of numbness in my hand.

02:48:11

10 Q. Okay. Do you have a disability?

11 A. It's according to what you mean by that.  
12 Alcoholism, yes, I did at one time. But since then  
13 I have been through my programs and all that. I  
14 guess you consider that a disability.

02:48:31

15 Q. Well, I'm asking whether you consider  
16 yourself to have had a disability at some point.

17 A. Not, like I said, other than my hand. I  
18 don't have the strength in that as much as I did.  
19 And then my foot swelling up if I wear shoes all day  
20 long or whatever. I have to wear a bigger shoe on  
21 this foot. I have to at least have it loose.

02:48:52

22 Q. When did you first consider suing the  
23 union in this matter?

24 A. When Dave didn't seem like he was really



2:55

1 Q. Let me just follow up real quick.

2 (Exhibit No. 16 marked for identification.)

03:03:19

3 Q. You've been handed what's been marked as  
4 Exhibit 16, which I'll represent is a photocopy of  
5 the Nyquil bottle that you told me you took some of  
6 and a photocopy of the mouth spray which you said  
7 was exactly like what you'd taken on the November  
8 date.

9 A. Yes.

03:03:30

10 Q. Is that an accurate photocopy of those two  
11 items?

12 A. Yes.

03:03:43

13 Q. Yes. Okay. And did you tell anyone at  
14 Keebler that you had taken Nyquil or that you had  
15 just sprayed your mouth with mouth spray in  
16 November?

03:03:54

17 A. Just when I talked to I think Sharon and  
18 them, you know. I told them I took some before.  
19 And I told them that at the place where they gave me  
20 my urine test. I told them.

21 Q. Okay. And that's it?

22 A. Mm-hmm.

23 MS. PRYOR: Okay. I have no further  
24 questions. And we'll just hold it open.

*Bakery, Confectionery, Tobacco Workers  
and Grain Millers International  
Union AFL-CIO-CLE Local 253*

*5725 Dragon Way suite 115 Cincinnati Ohio 45227  
Fax 513-272-3282 Phone 513-272-0147*

Mrs. Rebecca Summers

March 11, 2002

Dear Mrs. Summers:

On March 10, 2002 the Executive Board of Local 253 met concerning your discharge grievance 1660 dated Dec.3, 2001 with Keebler Company.

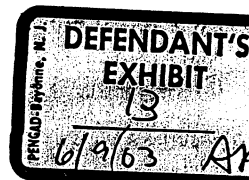
After a full and complete investigation of all the facts and considering our legal counsel's advice, Local 253 has decided to withdraw your grievance and not pursue this case into arbitration.

Regretfully,

Dave L. Richardson  
Pres. B.A. Local 253  
B.C.T.G.M.

ATT. MARK J. BYRNE

381-4150



000028

7:08 1 too interested in even trying to help me.

2 Q. Was that --

3 A. He was the one that told me I should get a  
4 lawyer.

02:49:20 5 Q. Did he tell you why you should get a  
6 lawyer?

7 A. He just said my only chance of even  
8 winning anything, getting my job back or whatever,  
9 would be if I had an attorney.

02:49:33 10 Q. Was that after he told you the union was  
11 not going to arbitration?

12 A. Yes.

13 Q. Okay. Was that bad advice?

14 A. No. I don't think so.

02:49:43 15 Q. Okay. Was he suggesting at that point  
16 that you sue the union?

17 A. No.

18 Q. Okay. Without asking about any  
19 conversations that you've had with lawyers, did you  
20 speak with anyone else about suing the union?

02:50:14

21 A. No.

22 Q. More specifically, did you ever talk to  
23 Paul Smith about suing the union?

24 A. Yes.